(1) Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

JEFFREY B. VENEZIA,

Petitioner,

v.

EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES; EQUICO SECURITIES, INC., REGISTERED REPRESENTATIVE; EQUITABLE VARIABLE LIFE INSURANCE COMPANY; KRAHNERT AGENCY; CAMPBELL DISTRICT,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

JEFFREY B. VENEZIA
29 Park Gate Drive
Edison, New Jersey 08820
(732) 632-9418

QUESTIONS PRESENTED

1. Whether Equitable Life Soc., et al., is in violation of the "Commerce Clause", Clause 3 in Article I, Section 8 of the constitution, "to regulate commerce . . . among the several states,[1] "Commerce Clause as the constitution base, all with Supreme Court's approval",[2] *Heart of Atlanta Motel, Inc. v. United States* (1964) and *Katzenback v. McClung* (1964). Does not hiring homosexual agents have deleterious effect on interstate commerce in the Life Insurance business? Does hiring heterosexual sales staff cause a market to be unserviceable and neglected?

2. Does the business worry of AIDS in the Life Insurance industry have a deleterious effect on the homosexual community by not providing them with an invitation to purchase insurance?

3. Does not regulation require all Americans and residents (legal) access to goods and services and therefore is not equitable under violation of Consumer Protection Laws?

4. The Equal Protection Clause of the Fourteenth Amendment was adopted in 1868, but the framers of the Equal Protection Clause deliberately drafted it to provide protection for equal rights of all persons.[3] Does not the Equal Protection Clause protect me when I am providing a service of valuable economic service and possible survivability to all citizens and

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[1] The Oxford Companion to The Supreme Court of the United States, Oxford University Press, Inc. 1992, page 167.

[2] The Oxford Companion to the Supreme Court of the United States, Oxford University Press, Inc. 1992, page 169.

[3] The Oxford Companion to The Supreme Court of the United States, Oxford University Press, Inc. 1992, page 257.

QUESTIONS PRESENTED – Continued

residents of New Jersey and New York state (including homosexuals)?

5. Does the Civil Rights Act of 1991, eliminating the Claim of Employers' "business necessity", eliminate any grounds of this legal discharge of Jeffrey B. Venezia?

6. Full disclosure of my financial and economic history is given to Equitable, including medical. The company accepts this and hired me, then made numerous efforts to manipulate records! Why would Equitable tell Civil Rights of New Jersey my financial position is unacceptable? Why would they use this to tell Civil Rights of New Jersey this is why they are not hiring me. I was hired 5 months earlier! I was working for Equitable 5 months. Equitables' top employers and management are in violation of Security Exchange Commission and NASDAQ rules. Is not manipulation of employment records in complete violation of Federal Laws?

PETITION FOR WRIT OF CERTIORARI

To the Honorable William Rehnquist, Chief Justice of the United States and to the Honorable Associate Justices of the United States Supreme Court: Jeffrey B. Venezia, petitioner, seeks a Writ of Certiorari to the United States Court of Appeals for the Third Circuit from ruling opinion entered August 25, 2000. Rehearing/suggestion for hearing en banc denied.

OPINION BELOW

The United States Court of Appeals for the Third Circuit entered its unpublished opinion, *Jeffrey B. Venezia v. Equitable Life Society of the United States*, August 25, 2000.

The United States District Court, District of New Jersey letter opinion was July 19, 1999. Copies of the opinions appear in the Appendix.

JURISDICTIONAL GROUNDS

Jurisdiction to review by certiorari, a decision of a United States Circuit Court, is provided under 28 U.S.C. 1254(1).

UNITED STATES CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Supremacy Clause, Article VI Clause 2. This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or

which shall be made, under the authority of the United States, shall be the Supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding. Commerce Power Clause 3, in Article I section 8 of the Constitution, Equal Protection Clause of the Fourteenth Amendment, Federal Rules Civil Rights Act 1991, Rehabilitation Act 29 U.S.C.A. §§ 706, 791-94 ADA – *Wynne v. Tufts*, University School of Medicine (1st Cir. 1991).

STATEMENT OF CASE

Jeffrey B. Venezia was a fully registered rep. with Series Seven rating on the Registered Options Principal Examination. He was working full-time at Equitable Management. Equitable repeatedly referred to me as homosexual. Management, Mr. Campbell, repeatedly asked me if I was homosexual. I repeatedly told them that I was not. Mr. Campbell told me he did not want any homosexuals in the Agency or "around here."

Campbell's abusive language and repeated sexual and gender attacks caused Jeffrey B. Venezia emotional problems. Jeffrey B. Venezia informed Krahnert, the agency manager. His action was to force me to leave the company.

Jeffrey B. Venezia's religious beliefs and practices were made by Campbell to totally change under distress. Campbell gave him a work schedule that made him go to church.

Jeffrey B. Venezia's understanding of selling to any qualified and legally able people infuriated management. "Church" people are what Campbell wanted. "That is the kind of business we want."

Venezia's belief and selling idea was that the service was open to all Americans, not just "church" people.

Campbell intensified his verbal attacks. Venezia fully disclosed all financial records and standings with Equitable.

The Krahnert Agency had Jeffrey B. Venezia change applications. The Krahnert Agency falsified the reasons for the change. The false explanation why. Venezia followed proceedings with NASDAQ and that caused more verbal and homosexual attacks on Jeffrey B. Venezia.

ARGUMENT I

Article VI, Clause 2, United States Constitution, the Supremacy Clause, requires that recognition be given.

ARGUMENT II

Certiorari should be granted to set national federal standards that must govern Commerce Clause.

ARGUMENT III

Certiorari should be granted to set National Federal Standards Equal Protection Clause of the Fourteenth Amendment.

ARGUMENT IV

Certiorari should be granted to resolve the issue under the United States Civil Rights Act of 1991.

ARGUMENT V

Certiorari should be granted to resolve an issue under the United States Guidelines Illegally Motivated Decision – Making § 10.01. The defendants' actions were actually motivated by a factor prohibited by the statutes.

ARGUMENT VI

Certiorari should be granted to resolve an issue under the United States Handicaps and Disabilities § 17.01.

CONCLUSION

For any one of the six key and de novo issues of this petition, all raising important questions of Federal law, that has not been, but should be, settled by this Court,

Certiorari should be granted to the United States Court of Appeals for the Third Circuit.

DATED Jan. 25, 2001

Respectfully submitted,

JEFFREY B. VENEZIA

UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO: 99-5594

JEFFREY B. VENEZIA,

Appellant

v.

EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES; EQUICO SECURITIES, INC., REGISTERED REPRESENTATIVE; EQUITABLE VARIABLE LIFE INSURANCE COMPANY; KRAHNERT AGENCY; CAMPBELL DISTRICT

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 98-cv-05050)
District Judge: Honorable Nicholas H. Politan

Submitted Under Third Circuit LAR 34.1(a)
August 17, 2000

Before: ALITO, AMBRO AND ROSENN, *CIRCUIT JUDGES*

(Filed: August 25, 2000)

OPINION

PER CURIAM

Jeffrey Venezia appeals *pro se* from the District Court's final judgment in this action dismissing his complaint which alleged defendants wrongfully terminated his employment because they perceived him to be gay, discriminated against him due to a mental disability, and infringed on his First Amendment right to the free exercise of religion. For the reasons that follow, we will affirm.

The District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. The District Court's dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6) is subject to plenary review. *See University of Maryland at Baltimore v. Peat, Marwick, Main & Co.*, 996 F.2d 1534, 1537-38 (3d Cir. 1993).

Before filing this action, Venezia filed a claim of discrimination with the New Jersey Department of Civil Rights ("NJDCR"). The NJDCR conducted an investigation of the allegations and concluded that there was no probable cause that discrimination had occurred. (SA 66). Venezia did not appeal that decision to the New Jersey courts. Venezia then filed a complaint in federal court against appellees alleging wrongful termination, discrimination because of mental disability and a violation of his First Amendment right to exercise religion.

Venezias's complaint[1] does not cite any statutes except for a vague reference to the Americans with Disabilities Act ("ADA"). However, in accordance with the liberal pleading standard afforded *pro se* litigants, *see Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), the District Court construed Venezia's complaint as raising allegations of wrongful termination, discrimination and unlawfully restricting Venezia's First Amendment right to the free exercise of religion.

Venezia's first claim alleged that he was fired because management believed he was gay. (Informal Br. 2-3; SA 52-53). The District Court viewed Venezia's complaint as falling under Title VII. Although this Circuit has never addressed the question, it is well established that Title VII does not recognize discrimination based upon sexual preference. *See Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 258 (1st Cir. 1999) ("Title VII does not proscribe harassment . . . because of sexual orientation."); *Hopkins v. Baltimore Gas & Elec. Co.*, 77 F.3d 745, 751-52 & n. 3 (4th Cir.1996) (same); *Schmedding v. Tnemec Company, Inc.*, 187 F.3d 862, 864 (8th Cir. 1999) (same).

Additionally, any state law claim Venezia may raise under the New Jersey Law Against Discrimination ("NJLAD") is barred because Venezia chose to pursue his complaint through the NJDCR. *See* N.J. Stat. Ann. § 10:5-27 (West 1993). Therefore, to the extent that Venezia's complaint raises allegations of discrimination

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[1] The Informal Brief that appellant filed with this Court is equally vague.

based on perceived sexual orientation, the District Court's order dismissing the complaint was correct.

Venezia also claimed that appellees violated the Americans with Disabilities Act ("ADA") because his manager was so hostile that it affected Venezia's mental stability. Regardless of the merits of this claim, Venezia failed to exhaust his administrative remedies, which is a prerequisite to bringing an action under the ADA. *See* 42 U.S.C. § 12117. Venezia has offered no argument that he should be excused from this requirement.

To the extent Venezia's complaint raised a claim of sexual harassment based on the perception he was gay, the District Court correctly dismissed the complaint because Venezia never filed a complaint with the Equal Employment Opportunity Commission. *See* 42 U.S.C. § 2000e-5.

Venezia's claim that the appellees violated his First Amendment right to exercise freely his religion was properly dismissed because appellees are not state actors. *See Hudgens v. NLRB*, 424 U.S 507, 513 (1976) ("It is, of course, a commonplace that the constitutional guarantee of free speech is a guarantee only against abridgement by government, federal or state.").

For the foregoing reasons, we will affirm the District Court's judgment.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
NICHOLAS H. POLITAN
JUDGE

MARTIN LUTHER
KING JR.
FEDERAL BUILDING &
U.S. COURTHOUSE
50 WALNUT ST.,
ROOM 5076
P.O. BOX 999
NEWARK, N.J. 07101-0999

NOT FOR PUBLICATION

July 19, 1999

LETTER OPINION

ORIGINAL ON FILE WITH CLERK OF THE COURT

Mr. Jeffrey B. Venezia
29 Park Gate Drive
Edison, NJ 08820
Plaintiff Pro Se

Robert B. Nussbaum, Esq.
SAIBER, SCHLESINGER, SATZ & GOLDSTEIN
One Gateway Center
Newark, NJ 07102-5311
Attorneys for Defendant
Equitable Life Assurance

RE: Jeffrey B. Venezia
v. Equitable Life Assurance
Society of the United States
Civil Action No. 98-5050 (NHP)

Dear Litigants:

This matter comes before the Court on defendants' motion to dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1). The Court heard oral argument on May 24, 1999. For the reasons explained below, defendants' motion is GRANTED.

FACTUAL BACKGROUND

Defendant Equitable Life Assurance Company sells insurance, annuity contracts, and other equity products. Defendant hired plaintiff Venezia as a probationary sales agent during August of 1996. Plaintiff's employment was terminated on November 14, 1996. According to the defendants, Venezia was fired because: (1) he failed to meet productivity requirements; (2) he was belligerent; and (3) he had serious credit problems that would require defendants to provide closer supervision. Plaintiff Venezia's Complaint alleges that he was terminated because, among other things, he was perceived to be a homosexual.

On November 26, 1996, plaintiff filed a complaint with the New Jersey Department of Law and Public Safety, Division on Civil Rights (the "DCR"), alleging discrimination on the basis of perceived sexual orientation, in violation of the New Jersey Law Against Discrimination (the "NJLAD"). The DCR issued a finding of no probable cause on August 5, 1998. Plaintiff's appeal of that finding was denied on November 18, 1998.

DISCUSSION

A motion to dismiss under Rule 12(b) (6) should be granted only if it is beyond doubt that the "plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Because plaintiff Venezia is proceeding *pro se*, this Court construes his Complaint liberally.

Turning first to plaintiff's claim of discrimination on the basis of his sexual orientation, or his perceived orientation, such claims are not cognizable under Title VII. *See Caldwell v. KFC Corp.*, 958 F. Supp. 962, 967, n.2 (D.N.J. 1997) (citing *Hopkins v. Baltimore Gas & Elec. Co.*, 77 F.3d 745, 751 (4th Cir. 1996); *see also Hicks v. Arthur*, 891 F. Supp. 213, 215 (E.D. Pa. 1995), *aff'd without op.*, 91 F.3d 123 (3d Cir. 1996). To the extent that such a claim is actionable under the New Jersey Law Against Discrimination ("NJLAD"), plaintiff's lawsuit is barred because he has already pursued his administrative remedies in the Division of Civil Rights. *See Ferrara v. Tappan Co.*, 722 F. Supp. 1204, 1205 (D.N.J. 1989) (holding that "pursuant to the NJLAD, when parties seek administrative redress for their claims they are banned from then seeking relief via the courts"); *see also Christian Bros. Inst. v. Northern N.J. Interschool League*, 86 N.J. 409, 415 (1981).

With regard to plaintiff's claims of disability discrimination under the Americans with Disabilities Act, which are based upon plaintiff's alleged mental and emotional disabilities, these claims are barred because plaintiff did not file a complaint with the EEOC, and also because the allegations are not fairly within the scope of the sexual orientation claims that plaintiff pursued in the DCR. *See*

Ditzel v. University of Med. & Dentistry, 962 F. Supp. 595, 602 (D.N.J. 1997). The time for filing an EEOC complaint has now lapsed.

To the extent that plaintiff alleges that he has been the victim of same-sex sexual harassment, plaintiff has not exhausted his administrative remedies, and the time for pursuing such remedies has not passed.

Finally, plaintiff cannot prevail on his claim that the defendants violated his First Amendment right to freely exercise his religion because the defendants are not state actors.

For these reasons, plaintiff can prove no set of facts that would entitle him to relief. The time for Venezia to pursue his administrative remedies has now lapsed, and there is no basis for equitable tolling. Repleading the complaint would therefore be futile.

CONCLUSION

For the reasons explained above, defendants' motion to dismiss the Complaint is GRANTED. The Complaint is DISMISSED WITH PREJUDICE.

An appropriate Order accompanies this Letter Opinion.

/s/ Nicholas H. Politan
NICHOLAS H. POLITAN
U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY B. VENEZIA, Plaintiff, v. EQUITABLE LIFE ASSURANCE, etc., et al., Defendants.	CIVIL ACTION NO. 98-5050 HON. NICHOLAS H. POLITAN **FINAL ORDER**

THIS MATTER having come before the Court on defendants' motion to dismiss the Complaint; and the Court having heard oral argument on May 24, 1999 and having considered the parties' written submissions; and for the reasons set out in this Court's Letter Opinion in the above-captioned matter; and for good cause shown;

IT IS on this 19th day of July, 1999,

ORDERED that defendants' motion to dismiss the Complaint be and hereby is GRANTED; and it is further

ORDERED that plaintiff's Complaint be and hereby is DISMISSED WITH PREJUDICE; and it is further

ORDERED that this case is CLOSED.

/s/ Nicholas H. Politan
NICHOLAS H. POLITAN
U.S.D.J.

NASD PROCTOR Professional Development Centers

New York Stock Exchange, Inc.

EXAM TITLE: General Securities Representative Examination

EXAM SERIES: 7

NAME: JEFFREY VENEZIA

ID NUMBER: 137-56-1428

DATE: Tuesday April 26, 1994

SCORE: 80% GRADE: Pass

SECTION ANALYSIS

1 Advertising, Qualifying Customers, Industry Regulations
SCORE ..... 83%, 26 of 31 correct.

2 Securities Instruments
SCORE ..... 76%, 64 of 84 correct.

3 Handling Customer Accounts, Taxation, Margin
SCORE ..... 82%, 28 of 34 correct.

4 Securities Markets, Order Handling, Confirmations
SCORE ..... 85%, 29 of 34 correct.

5 Economics, Securities Analysis, Sources of Financial Information
SCORE ..... 79%, 23 of 29 correct.

6 Portfolio Analysis, Investment Strategies, Retirement Plans
SCORE ..... 84%, 32 of 38 correct.

Totals ..... 80%, 202 of 250 correct.

The following national information is provided for comparison purposes:

National Passing Rate: 71%
National Average Score: 75%
National Average Section Scores:

(1) 77%, (2) 75%, (3) 73%,

(4) 73%, (5) 72%, (6) 79%

EQUITABLE

Agent Application

The Equitable as an equal opportunity employer does not discriminate against any applicant for employment because of race, color, religion, national origin, age, sex, marital status, physical or mental disabilities or sexual orientation.

BEST AVAILABLE COPY

EDUCATION

LIST HONORS, DISTINCTIONS AND EXTRA CURRICULAR ACHIEVEMENTS (those which would disclose race, color, religion, national origin, age, sex, physical disabilities or sexual orientation need not be provided).

PROFESSIONAL TRADE GROUP MEMBERSHIPS AND OFFICES HELD

Those which would disclose race, color, religion, national origin, age, sex, physical disabilities or sexual orientation need not be provided.

NAME OF ORGANIZATION	OFFICES HELD DURING PAST FIVE YEARS
University of Washington Student Assembly	yes
Hail aged Rail Assn:	
Phi Eta Sigma Foreign student assn	
Adventure Cycling	
Mensa	
Holy Name society	

ADDITIONAL INFORMATION

1. HAVE YOU EVER BEEN SHORT OR IN ARREARS IN YOUR ACCOUNTS IN ANY POSITION OR OFFICE?	☒ YES	☐ NO
2. HAVE YOU EVER HAD A SECURITIES LICENSE SUSPENDED OR REVOKED?	☐ YES	☒ NO
3. DO YOU PLAN TO CONTINUE ANY CURRENT BUSINESS OR EMPLOYMENT ACTIVITIES?	☐ YES	☒ NO
4. ARE THERE NOW OR HAVE THERE EVER BEEN ANY JUDGMENTS OR SUITS PENDING AGAINST YOU?	☐ YES	☒ NO
5. HAVE YOU EVER BEEN BANKRUPT, INSOLVENT OR COMPOUNDED WITH CREDITORS?	☐ YES	☒ NO
6. HAVE YOU EVER BEEN CONVICTED OF A FELONY WITHIN THE LAST 7 YEARS? (CONVICTION WILL NOT NECESSARILY DISQUALIFY AN APPLICANT FROM EMPLOYMENT.)	☐ YES	☒ NO

IF ANSWERS TO ANY OF THE ABOVE QUESTIONS IS YES EXPLAIN BELOW

Because of unemployment fell behind on some Credit Cards and Condo association dues. In the process of paying these off, I have already made arrangements to have brought accounts back to good standing.

I AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE, CORRECT AND COMPLETE. I AGREE THAT THIS APPLICATION SHALL REMAIN THE PROPERTY OF THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES AND HEREBY AUTHORIZE SAID COMPANY TO MAKE A THOROUGH BACKGROUND INVESTIGATION OF THE INFORMATION DISCLOSED HEREIN AND RELEASE FROM ALL LIABILITY OR RESPONSIBILITY ALL PERSONS, COMPANIES OR CORPORATIONS SUPPLYING SUCH INFORMATION

PRINT NAME OF APPLICANT: Jeffrey Venezia

SIGNATURE OF APPLICANT: Jeffrey Venezia DATE SIGNED: July 18, 1996